



# Could A Mistake by Your Company Nurse Lead to Civil Liability in North Carolina?

Insights

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Employers have long operated under the premise that the North Carolina Workers' Compensation Act provides the exclusive remedy for workers injured on the job. Indeed, section 97.-10.1 of the North Carolina Workers' Compensation Act states that employers in compliance with the Act are protected from all other claims and remedies that could be brought by employees, dependents, next of kin, or representatives in the event of a workplace injury or death.

Although intentional or willful acts by an employer leading to a workplace injury have in very isolated situations been an exception to this rule of exclusivity and opened the door for injured employees to sue their employer in state court, the Court of Appeals of North Carolina may have recently created another exception.

In *Jackson v. The Timken Company*, decided May 21, 2019, Todd Preston Jackson suffered a stroke while at work at a manufacturing facility. He alleged that his stroke was misdiagnosed by an onsite company nurse, who had 41 years of experience and completed a physical examination of Jackson. After the medical event, Jackson was able to walk without assistance, responded appropriately to questions, exhibited no weakness, followed commands, and had no change in speech, balance, or facial features. The nurse sent Jackson home with instructions to follow up with his primary care provider. However, Jackson soon collapsed in the parking lot of his primary care provider's office and was rushed to the hospital. He survived but suffered permanent injuries.

Jackson filed a workers' compensation claim against his employer and the claim was denied because the deputy commissioner found that Jackson did not sustain an injury relating to an "accident" arising out of and in the "course and scope of his employment" as defined by North Carolina law. Jackson then filed an action in state court against his employer for medical negligence. The employer asked the court to dismiss Jackson's action, arguing that the state Workers' Compensation Act provided the exclusive remedy. The trial court denied the motion to dismiss and the employer appealed the decision to the North Carolina Court of Appeals.

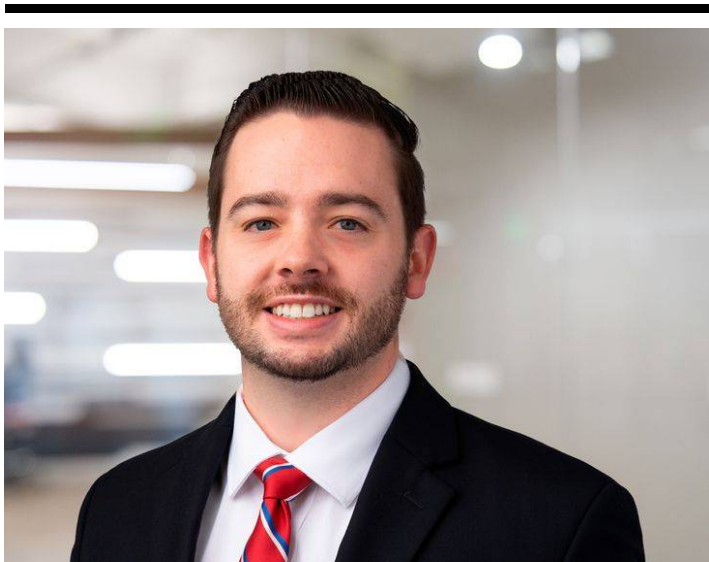
The Court of Appeals affirmed the trial court's decision, finding that Jackson's injury was not caused by an accident and did not arise out of and in the course of his employment, thereby permitting him to pursue his injury claim against his employer. The Court stated "an employee seeking care from a

medical professional at his place of work is not the type of occurrence that creates an injury by accident under the Act.”

The Court of Appeals’ decision contradicts the North Carolina Supreme Court’s previous decision holding that the Act “provides the exclusive remedy when an employee is injured in the course of his employment by the ordinary negligence of co-employees.” *Abernathy*, 321 N.C. 236, 362 S.E.2d 559 (1987). The Court of Appeals distinguished Jackson’s claim from *Abernathy* on the basis that Jackson alleged that the coworker nurse had breached the special duty imposed on medical professionals rendering care.

The Court’s decision in *Jackson* could be interpreted to create a new exception to the exclusive remedy provision of the North Carolina Workers Compensation Act. Employers with onsite medical professionals should take note of this decision. Specifically, the Court stated that “where an injury occurs in the course of one’s employment but is not caused by an accident and does not arise out of that employment, the injury does not fall under The Act and the injured party may not be compensated thereunder.” This language may provide an avenue for employees and their counsel to get around the exclusive remedy provision, subjecting you to potential civil claims. You should, therefore, work with your workplace safety counsel to ensure your onsite medical services are operating in a manner that not only provides necessary aid to your workforce but also minimizes potential legal liability.

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